Basel III NPR

Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action

Preamble Section	Questions
I. Introduction and Definitions	1. The agencies solicit comment on all aspects of the proposals including comment on the specific issues raised throughout this preamble. Commenters are requested to provide a detailed qualitative or quantitative analysis, as appropriate, as well as any relevant data and impact analysis to support their positions.
II. Minimum Capital Requirements, Regulatory Buffer, and Requirements for Overall Capital Adequacy	
A. Minimum Capital Requirements and Regulatory Capital Buffer	
B. Leverage Ratio	2. The agencies solicit comments on all aspects of this proposal, including regulatory burden and competitive impact. Should all banking organizations, banking organizations with total consolidated assets above a certain threshold, or banking organizations with certain risk profiles (for examples, concentrations in derivatives) be required to comply with the supplementary leverage ratio, and why? What are the advantages and disadvantages of the application of two leverage ratio requirements to advanced approaches banking organizations? 3. What modifications to the proposed supplementary leverage ratio should be considered and why? Are there alternative measures of exposure for repo-style transactions that should be considered by the agencies? What alternative measures should be used in cases in which the use of the current exposure method may overstate leverage (for example, in certain cases of calculating derivative exposure) or understate leverage (for example, in the case of credit protection sold)? The agencies request data and supplementary analysis that would support consideration of such alternative measures. 4. Given differences in international accounting, particularly the difference in how International Financial Reporting Standards and Generally Accepted Accounting Procedures treat securities for securities lending, the agencies solicit comments on the adjustments that should be contemplated to mitigate or offset such differences. 5. The agencies solicit comments on the advantages and disadvantages of including off-balance sheet exposures in the supplementary leverage ratio. The agencies seek detailed comments, with supporting data, on the proposed method of calculating exposures and estimates of burden, particularly for off-balance sheet exposures.
C. Capital Conservation Buffer (Capital Distributions and Discretionary Bonus Payments)	6. The agencies seek comment on all aspects of the proposed capital buffer framework, including issues of domestic and international competitive equity, and the adequacy of the proposed buffer to provide incentives for banking organizations to hold sufficient capital to withstand a stress event and still remain above regulatory minimum capital levels. What are the advantages and disadvantages of requiring advanced approaches banking organizations to calculate their capital buffers using total risk-weighted assets that are the greater of standardized total risk-weighted assets and advanced total risk-weighted assets? What is the potential effect of the proposal on banking organizations' processes for planning and executing capital distributions and utilization of discretionary bonus payments to retain key staff? What modifications, if any, should the agencies consider? 7. The agencies solicit comments on the scope of the definition of executive officer for purposes of the limitations on discretionary bonus payments under the proposal. Is the scope too broad or too narrow? Should other categories of employees who could expose the institution to material risk be included within the scope of employees whose discretionary bonuses could be subject to the restriction? If so, how should such a class of employees be defined? What are the potential implications for a banking organization of restricting discretionary bonus payments for executive officers or for broader classes of employees? Please provide data and analysis to support your views. 8. What are the pros and cons of the proposed definition for eligible retained income in the context of the proposed quarterly limitations on

	capital distributions and discretionary bonus payments? 9. What would be the impact, if any, in terms of the cost of raising new capital, of not allowing a banking organization that is subject to a maximum payout ratio of zero percent to make a penny dividend to common stockholders? Please provide data to support any responses.
D. Countercyclical Capital Buffer	10. The agencies solicit comment on potential inputs used in determining whether excessive credit growth is occurring and whether a formula-based approach might be useful in determining the appropriate level of the countercyclical capital buffer. What additional factors, if any, should the agencies consider when determining the countercyclical capital buffer amount? What are the pros and cons of using a formula-based approach and what factors might be incorporated in the formula to determine the level of the countercyclical capital buffer amount? 11. The agencies recognize that a banking organization's risk-weighted assets for private sector credit exposures should include relevant covered positions under the market risk capital rule and solicit comment regarding appropriate methodologies for incorporating these positions; specifically, what position-specific or portfolio-specific methodologies should be used for covered positions with specific risk and particularly those for which a banking organization uses models to measure specific risk? 12. The agencies solicit comment on the appropriateness of the proposed 12month prior notification period to adjust to a newly implemented or adjusted countercyclical capital buffer amount.
E. Prompt Corrective Action (PCA) Requirements	13. The agencies seek comment regarding the proposed incorporation of the supplementary leverage ratio into the PCA framework, as well as the proposed ranges of PCA categories for the supplementary leverage ratio. Within the proposed ranges, what is the appropriate percentage for each PCA category? Please provide data to support your answer. 14. The agencies solicit comment on the proposed regulatory capital requirements in the PCA framework, the introduction of a common equity tier I ratio as a new capital measure for purposes of PCA, and the proposed PCA thresholds for each PCA category.
F. Supervisory Assessment of Overall Capital Adequacy	
G. Tangible Capital Requirement for Federal Savings Associations	
III. Definitions of Capital	
A1. Common Equity Tier 1 Capital (Unrealized Gains and Losses on Securities)	15. The agencies solicit comments on the eligibility criteria for common equity tier I capital instruments. Which, if any, criteria could be problematic given the main characteristics of outstanding common stock instruments and why? Please provide supporting data and analysis. 16. To what extent would a requirement to include unrealized gains and losses on all debt securities whose changes in fair value are recognized in accumulated other comprehensive income (1) result in excessive volatility in regulatory capital; (2) impact the levels of liquid assets held by banking organizations; (3) affect the composition of the banking organization’s securities portfolios; and (4) pose challenges for banking organizations’ asset-liability management? Please provide supporting data and analysis. 17. What are the pros and cons of an alternative treatment that would allow U.S. banking organizations to exclude from regulatory capital unrealized gains and losses on debt securities whose changes in fair value are predominantly attributable to fluctuations in a benchmark interest rate (for example, U.S. government and agency debt obligations and U.S. government-sponsored entity debt obligations)? In the context of such an alternative treatment, what other categories of securities should be considered and why? Are there other alternatives that the agencies should consider (for example, retaining the current treatment for unrealized gains and losses on available for sale debt and equity securities)?
A2. Additional Tier 1 Capital	18. The agencies solicit comments and views on the eligibility criteria for additional tier 1 capital instruments. Is there any specific criterion that could potentially be problematic given the main characteristics of outstanding non-cumulative perpetual preferred instruments? If so, please explain. 19. What is the potential impact of such a requirement on the traditional hierarchy of capital instruments and on the market dynamics and cost of issuing additional tier 1 capital instruments? 20. What mechanisms could be used to ensure, contractually, that such a requirement would not result in an additional tier 1 capital instrument being effectively more loss absorbent than common stock?
A3. Tier 2 Capital	21. The agencies solicit comments on the eligibility criteria for tier 2 capital instruments. Is there any specific criterion that could potentially be problematic? If so, please explain.
A4. Capital Instruments of	22. What instruments or accounts currently included in the regulatory capital of mutual banking organizations would not meet the proposed

Mutual Banking Organizations	criteria for capital instruments? 23. What impact, if any, would the exclusion of such instruments or accounts have on the regulatory capital ratios of mutual banking organizations? Please provide data supporting your answer. 24. Would such instruments be unable to meet any of the proposed criteria? Could the terms of such instruments be modified to align with the proposed criteria for capital instruments? Please explain. 25. Would the proposed criteria for capital instruments affect the ability of mutual banking organizations to increase regulatory capital levels going forward?
A5. Grandfathering of Certain Capital Instruments	
A6. Agency Approval of Capital Elements	
A7. Addressing the Point of Non-viability Requirements under Basel III	
A8. Qualifying Capital Instruments Issued by Consolidated Subsidiaries of a Banking Organization	26. The agencies solicit comments on the proposed qualitative restrictions and quantitative limits for including minority interest in regulatory capital. What is the potential impact of these restrictions and limitations on the issuance of certain types of capital instruments (for example, subordinated debt) by depository institution subsidiaries of banking organizations? Please provide data to support your answer. 27. The agencies are seeking comment on the proposed treatment of real estate investment trust preferred capital. Specifically, how would the proposed minority interest limitations and interpretation of criterion (7) of the proposed eligibility criteria for additional tier I capital instruments affect the future issuance of real estate investment trust preferred capital instruments?
B1. Regulatory Deductions from Common Equity Tier 1 Capital (Savings Association Subsidiaries that Engage in Activities Impermissible for National Banks)	28. The OCC and FDIC request comments on all aspects of this proposal to incorporate the current deduction requirement for federal and state, savings association subsidiaries that engage in activities impermissible for national banks. In particular, the OCC and FDIC are interested in whether this statutorily required deduction can be revised to reduce burden on federal and state savings associations.
B2. Regulatory Adjustments to Common Equity Tier 1 Capital (Unrealized Net Gains and Losses on Cash Flow Hedges)	29. How would a requirement to exclude unrealized net gains and losses on cash flow hedges related to the hedging of items that are not measured at fair value in the balance sheet (in the context of a framework where the unrealized gains and losses on available for sale debt securities would flow through to regulatory capital) change the way banking organizations currently hedge against interest rate risk? Please explain and provide supporting data and analysis. 30. Could this adjustment potentially introduce excessive volatility in regulatory capital predominantly as a result of fluctuations in a benchmark interest rate for institutions that are effectively hedged against interest rate risk? Please explain and provide supporting data and analysis. 31. What are the pros and cons of an alternative treatment where floating rate liabilities are deemed to be fair valued for purposes of the proposed adjustment for unrealized gains and losses on cash flow hedges? Please explain and provide supporting data and analysis.
B3. Regulatory Deductions Related to Investments in Capital Instruments (of Financial Institutions)	32. The agencies seek comment on the proposed definition of financial institution. The agencies have sought to achieve consistency in the definition of financial institution with similar definitions proposed in other proposed regulations. The agencies seek comment on the appropriateness of this standard for purposes of the proposal and whether a different threshold, such as greater than 50 percent, would be more appropriate. The agencies ask that commenters provide detailed explanations in their responses. 33. The agencies solicit comments on the scope of indirect exposures for purposes of determining the exposure amount for investments in the capital of unconsolidated financial institutions. Specifically, what parameters (for example, a specific percentage of the issued and outstanding common shares of the unconsolidated financial institution) would be appropriate for purposes of limiting the scope of indirect exposures in this context and why? 34. What are the pros and cons of the proposed exclusion from the exposure amount of an investment in the capital of an unconsolidated financial institution for underwriting positions held by the banking organization for *5* business days or fewer? Would limiting the exemption to *5* days affect banking organizations' willingness to underwrite stock offerings by smaller banking organizations? Please provide data to

	support your answer.
B4. Items Subject to the 10 and 15 Percent Common Equity Tier 1 Capital Threshold Deductions	35. The agencies solicit comments and supporting data on the additional regulatory capital deductions outlined in this section above.
B5. Netting of Deferred Tax Liabilities Against Deferred Tax Assets and Other Deductible Assets	
B6. Deduction from Tier 1 Capital of Investments in Hedge Funds and Private Equity Funds Pursuant to Section 619 of the Dodd-Frank Act.	
IV. Denominator Changes	
V. Transition Provisions	36. The agencies solicit comments on the transition arrangements outlined previously. In particular, what specific regulatory reporting burden or complexities would result from the application of the transition arrangements described in this section of the preamble, and what specific alternatives exist to deal with such burden or complexity while still adhering to the general transitional provisions required under the Dodd-Frank Act? 37. What are the pros and cons of a potentially stricter (but less complex) alternative transitions approach for the regulatory adjustments and deductions outlined in this section C under which banking organizations would be required to (1) apply all the regulatory adjustments and deductions currently applicable to tier 1 capital under the general risk-based capital rules to common equity tier I capital from January 1, 2013 through December 31, 2015 and (2) fully apply all the regulatory adjustments and deductions proposed in section 22 of the proposed rule starting on January 1,2016? Please provide data to support your views. 38. The agencies solicit comment on the proposed transition arrangements for the supplementary leverage ratio. In particular, what specific challenges do banking organizations anticipate with regard to the proposed arrangements and what specific alternative arrangements would address these challenges?
VI. Additional OCC Technical Amendments	39. The OCC requests comment on all aspects of these proposed changes, but is specifically interested in whether it is necessary to retain the definitions of capital and surplus and related terms in redesignated subpart K.